

FILED

MAY 22 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EDUARDO HERNANDEZ, a/k/a
SERGIO SIERRA LOPEZ,

Defendant - Appellant.

No. 05-50546

D.C. No. CR-04-01491-JSL

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
J. Spencer Letts, District Judge, Presiding

Submitted May 15, 2006 ^{**}

Before: B. FLETCHER, TROTT, CALLAHAN, Circuit Judges.

Eduardo Hernandez appeals from his sentence imposed following his conviction for unlawful reentry of a deported alien, in violation of 8 U.S.C. § 1326. Hernandez contends that district court err by sentencing him to a term of 51

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

months when he only pled to the elements of 8 U.S.C. § 1326(a), which carries a maximum sentence of two years. He contends that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) is no longer good law. This issue is foreclosed. See *United States v. Weiland*, 420 F.3d 1062, 1080 n.16 (9th Cir. 2005) (holding that we are bound to follow *Almendarez-Torres* even though it has been called into question, unless it is explicitly overruled by the Supreme Court).

AFFIRMED.